

ARTICLE 63-05

WAIVERS AND VARIANCES

Chapter
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Section
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63-05-01-01. Waivers and variances.

1. **Waivers - Application.** A licensee or applicant for licensure may petition the board for a time limited waiver of any rule except for any part of a rule which incorporates a statutory requirement. The waiver must be granted if:
 - a. The rule in question does not address a problem of significance to the public in relation to the practice or application of the petitioner;
 - b. Adherence to the rule would impose an undue burden on the petitioner; and
 - c. The granting of a waiver will not adversely affect the public welfare.
2. **Waivers - Renewal, reporting, and revocation.** A waiver must be renewed upon reapplication according to the procedure described in subsection 1 if the circumstances justifying its granting continue to exist. Any petitioner who is granted a waiver shall immediately notify the board in writing of any material change in the circumstances which justify its granting. A waiver must be revoked if a material change in the circumstances which justify its granting occurs.
3. **Variances - Application.** A licensee or applicant may petition the board for a time limited variance from any rule except for any part of a rule which incorporates a statutory requirement. A variance must be granted if the petitioner specifies alternative practices or measures equivalent to or superior to those prescribed in the rule in question and provides evidence that:
 - a. The rationale for the rule in question can be met or exceeded by the specified alternative practices or measures;
 - b. Adherence to the rule would impose an undue burden on the petitioner; and

- c. The granting of the variance will not adversely affect the public welfare.
- 4. **Variances - Compliance.** Any petitioner who is granted a variance shall comply with the alternative practices or measures specified in the application for the variance.
- 5. **Variance - Renewal, reporting, and revocation.** A variance must be renewed upon reapplication according to the procedure described in subsection 3 if the circumstances justifying its granting continue to exist. Any petitioner who has been granted a variance shall immediately notify the board of any material change in circumstances which justify the granting of the variance. A variance shall be revoked if a material change in the circumstances which justify its granting occurs.
- 6. **Burden of proof.** The burden of proof is upon the petitioner to demonstrate to the board that the requirements in subsections 1 and 3 have been met.
- 7. **Statement of reasons.** The minutes of any meeting at which a waiver or variance is granted, denied, renewed, or revoked must include the reason for the action.

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